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|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/795,843

03/08/2004

Dilip K. Nakhasi

0803-0111

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02/02/2007

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SUITE 2850  
200 WEST ADAMS STREET  
CHICAGO, IL 60606

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

02/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/795,843 | <b>Applicant(s)</b><br>NAKHASI ET AL. |  |
|                              | <b>Examiner</b><br>Carolyn A. Paden  | <b>Art Unit</b><br>1761               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-30-04 &amp; 2-14-05</u> . | 6) <input type="checkbox"/> Other: _____  |

This application was the subject of an international search report that included a variety of prior art citations to be applied against the claims. These prior art citations were considered but were not used in the present rejection because examiner believed that the applied references were better references against the claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 12 and 16-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Seiden (5,288,512) and see example 1, wherein medium chain triglyceride and long chain triglyceride are interesterified. Claim 1 calls for “up to about 12 weight percent phytosterols ester, which contemplates 0%.

Claims 1-8, 12 and 16-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Seiden (3,595,673) and see column 2, lines 34-47). Claim 1 calls for “up to about 12 weight percent phytosterols ester, which contemplates 0%.

Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,793,959. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims contain the same interesterified triglyceride. Claim 1 calls for "up to about 12 weight percent phytosterols ester, which contemplates 0%.

Claims 21-48 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-38 of US Patent No. 6,793,959 in view of van Amerogen and as further evidenced by Yang ((4,832,975).

The Nakhasi patent is directed to a structured lipid pan release composition, which is the interesterified fat in the claims. The claims appear to differ from Nakhasi in the recitation of the inclusion of phytosterols esters in the composition. Van Amerogen is relied upon to show that it is known in the art to include phytosterols esters in fat compositions to aid in lowering cholesterol in the blood. It would have been obvious to one of ordinary skill in the art to fortify the fat composition of Nakhasi with phytosterols ester in order to provide a cholesterol lowering ingredient to the pan release composition of

Nakahasi. The claims also appear to differ from Nakhasi in the health effects of medium chain triglycerides. But these health effect are well known in the art as shown by Yang in column 4. It would have been obvious to one of ordinary skill in the art to expect the composition of Nakahasi with the phytosterols ester of van Amerongen to provide the known health effects of both of the ingredients of the composition.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37, 40, 43-48, 20-25, 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Amerongen (6,117,475) in view of Seiden (3,595,673) as further evidenced by Yang (4,832,875).

Van Amerongen discloses phytosterols ester for use in foods, that include margarines. The claims appear to differ from van Amerongen in the recitation of the inclusion of interesterified medium chain fatty acids in the fat. Seiden discloses a fat that is an interesterified fat containing medium chain triglycerides. It would

have been obvious to one of ordinary skill in the art to the fat composition of Seiden in the composition of van Amerongen in order to provide an added health benefit of improving one's lipid profile, as described by Yang at column 4. It would have been obvious to one of ordinary skill in the art to expect the composition of van Amerongen with the medium chain fatty acids of Seiden to provide the known health effects of both of the ingredients of the composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

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for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 1:2407  
PRIMARY EXAMINER 1761